

Court of Appeals, State of Michigan

ORDER

Kandra K Robbins v Sault Ste Marie Tribe of Chippewa Indians

Docket No. 290321

LC No. 06-008746-NO

William C. Whitbeck
Presiding Judge

Patrick M. Meter

Stephen L. Borrello
Judges

The Court orders that the motion to dismiss is DENIED. Contrary to appellee's argument, satisfaction of the judgment at issue by means of garnishment constituted an involuntary satisfaction of the judgment that did not waive appellant's right to appeal or render this appeal moot. *Kusmierz v Schmitt*, 268 Mich App 731, 740 n 3; 708 NW2d 151 (2005), rev'd on other grounds 477 Mich 934 (2006). The relevant discussion in *Kusmierz* did not constitute dicta. Rather, regardless of whether there were other grounds on which it might have disposed of the issue, the case call panel actually premised its rejection of the pertinent jurisdictional challenge on its holding that involuntary satisfaction of a judgment by means of garnishment did not render the appeal moot. In addition, the relevant holding in *Kusmierz* is not inconsistent with *Horowitz v Bolt*, 235 Mich 369; 209 NW 131 (1926), which involved an affirmative act of voluntary payment to satisfy a judgment for restitution.

The Court further orders that motion for leave to file a reply brief to address this Court's unpublished opinion in *Dep't of Transportation v Wilson*, unpublished opinion per curiam of the Court of Appeals, issued July 9, 2009 (Docket No. 282763) is also DENIED. As an unpublished opinion, that opinion is not precedentially binding under the rule of stare decisis. MCR 7.212(C)(1). Moreover, *Wilson* is also distinguishable from this case because it involved an affirmative, voluntary payment.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 28 2009

Date

Sandra Schultz Mengel
Chief Clerk